

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.36 of 2007

Krishankant Laddha

Petitioner

Vs.

Ghanashyam Khobrekar & anr.

Respondents

Mr.Subhash Jha i/b. Law Global for petitioner.

Mr.D.S.Sapkale for resp.no.1.

Mr.S.R.Shinde, APP for State.

CORAM: B.H.MARLAPALLE, J.

July 19, 2007.

P.C.

1. Heard Mr.Jha, the learned counsel for the petitioner, Mr.Sapkale appears for the respondent no.1-original complainant and the learned APP appears for the State. The petitioner has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 by the learned Judicial Magistrate, First Class at Vashi by his judgment and order dated 13/11/2006 in SCC No.982 of 2005. The said order came to be challenged in Criminal Appeal No.191 of 2006 before the Sessions Court at Thane. The accused - petitioner has been sentenced to suffer simple imprisonment of eight months and pay a fine of Rs.5,000/- in default thereof to suffer S.I. for two months more. Further

the accused has been directed to deposit an amount of Rs.30,99,000/- towards the compensation to be paid to the complainant within one month. In Criminal Appeal No.191 of 2006 an application under Section 389(1) of RC.P.C. came to be filed praying for suspension of the order of conviction and sentence passed by the learned Magistrate and impugned in the appeal. The learned Sessions Judge by his order dated 11/12/2006 suspended the impugned order of conviction and sentence subject to the appellant depositing the compensation amount to the extent of fifty per cent and furnishing PR bond for Rs.15,000/-. This order dated 11/12/2006 has been challenged in this writ petition.

2. Mr.Jha, the learned counsel for the petitioner-accused has relied upon the decision of the Supreme Court in the case of Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. **[2007 (1) Bom.C.R. (Cri.) 769]** and submitted that though it is discretionary for the lower Appellate Court to direct some deposit to be made, the direction to deposit 50 per cent of the compensation amount virtually defeats the statutory right of appeal and thus the law laid down in the case of Dilip Dahanukar (Supra) is

not followed.

3. Per contra, Mr.Sapkale submitted that the order passed by the lower Appellate Court is just and proper and the petitioner be directed to deposit 50 per cent of the amount and from the same half of the amount should be allowed to be withdrawn by the complainant.

4. The decision in the case of Dilip Dahanukar (Supra) does not lay down as a proposition in law that the lower Appellate Court has no powers to direct deposit of a reasonable amount from the compensation amount in an appeal arising from conviction and sentence under Section 138 of the Negotiable Instruments Act, 1881. In a case like the present one directing to deposit 50 per cent of the amount of compensation granted by the trial Court may be exorbitant and perhaps leading to defeat the right of appeal. It would be, therefore, just and proper that the petitioner is directed to deposit 10 per cent of the compensation amount with the lower Appellate Court so as to suspend the order of conviction and sentence. Mr.Sapkale does not agree to reduce the deposit amount below 50 per cent.

5. It is hereby directed that the petitioner shall deposit 10 percent of the compensation amount (Rs.30,99,000/-) with the lower Appellate Court within a period of four weeks from today and on that condition the order of conviction and sentence challenged in Criminal Appeal No.191 of 2006 will stand suspended. The impugned order stands modified accordingly. If the compensation amount as directed is deposited within the stipulated period, the pending appeal shall be heard and decided on its own merits as expeditiously as possible and preferably by 31st October 2007. The interim order passed by this Court staying the warrant will continue to operate for a period of four weeks or till the amount is deposited, whichever is earlier. Petition is disposed off accordingly.

(B.H.MARL